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No. 04-994

IN THE

Supreme Court of the United States

LUCENT TECHNOLOGIES INC.,

Petitioner,

v.

AARON FELIX, SR., *ET AL.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

RESPONDENTS' BRIEF IN RESPONSE TO PETITION FOR CERTIORARI

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QUESTIONS PRESENTED

1. Whether a former employee has standing to sue as a benefit plan "participant" under Section 502(a) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1132(a), and *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101 (1989), when he claims that, "but for" his employer's alleged wrongful acts, he would have been entitled to receive more generous benefits under amendments to his existing pension plan that were adopted after his retirement.

2. What is the proper disposition of this case if respondents have standing to sue under ERISA and their claims are subject to "complete preemption" as a result?

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INTRODUCTION

In this case, petitioner Lucent Technologies, Inc., asks the Court to hold that respondents have standing to sue it under ERISA. Lucent concedes that respondents' "core allegations here — that Lucent allegedly lied to get respondents to leave its workforce — are *undeniably sufficient to state an ERISA claim*" against Lucent. Pet. 28 (emphasis added). Lucent asks the Court to grant certiorari and reverse the Tenth Circuit out of concern that, under the Tenth Circuit's ruling, "wrongdoers can prevent standing through misrepresentations to employees," and, "[c]onsequently, claimants may be left without a remedy." Pet. 23. Lucent recognizes that former employees tricked into retiring early should be permitted to bring suit under ERISA to remedy the loss of plan benefits resulting from their retirement. Thus, it asserts that the ruling it requests will "strengthen the enforcement of ERISA, [and] promote the enforcement of claims by participants." Pet. 2.

Respondents agree with Lucent. Indeed, respondents concur not only that the Court should grant certiorari, but also that it should reverse the Tenth Circuit. There is a pronounced conflict among the circuits over whether plaintiffs making claims identical to respondents' have standing to sue under ERISA, and that conflict is squarely presented by the Tenth Circuit's holding in this case. Respondents also agree that the Tenth Circuit's conclusion that ERISA provides plaintiffs in their position no remedy is indefensible. If this Court grants certiorari, respondents will join Lucent in asking the Court to reverse the Tenth Circuit's ruling on that point.

Respondents, however, disagree with Lucent on one critical issue: the consequences of reversing the Tenth Circuit. Lucent appears to believe that a holding that respondents' claims fall within the scope of ERISA § 502(a), 29 U.S.C. § 1132(a), and are thus removable to federal court under the "complete preemption" doctrine, would also result in the dismissal of those claims. That is not so. The effect of the complete preemption doctrine is that it "converts an ordinary

state common law complaint into one stating a federal claim for purposes of the well-pleaded complaint rule." *See Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 65 (1987). In light of Lucent's admission that the claim so stated is "undeniably sufficient" under ERISA, Pet. 28, Lucent's further argument that the action should be dismissed makes no sense. To the contrary, the consequence of the reversal sought by Lucent would be remand to the district court for litigation of respondents' claim, so that they can pursue the ERISA remedy to which Lucent agrees they are entitled if they can prove the facts alleged in their complaint.

With the qualification that they disagree with Lucent about the consequences of reversing the Tenth Circuit, however, respondents join Lucent in urging that the Court grant certiorari and reverse the judgment of the Tenth Circuit.

STATEMENT

Respondents are a group of 463 former employees at petitioner Lucent's Oklahoma City Works. As Lucent explains, this case arises out of respondents' allegation that they were duped into early retirement in June 2001 by Lucent's misrepresentations that the early retirement benefits it offered at that time were non-negotiable and would not be increased thereafter. Respondents later learned that, had they remained at Lucent another four months, they would have received an important additional benefit: a cash payment of $15,000.

Under the clear law of the Tenth Circuit, retirees in respondents' position lacked standing to bring a claim under ERISA, notwithstanding that they would have been entitled to benefits but for the defendants' wrongful actions. *See Raymond v. Mobil Oil Corp.*, 983 F.2d 1528 (10th Cir. 1993). Respondents therefore had no choice but to file a complaint in Oklahoma state court asserting state-law causes of action instead of attempting to assert an ERISA claim.

Lucent nonetheless removed the action to federal court on the ground that respondents' claims were within the scope of

ERISA § 502(a) and thus subject to the "complete preemption" doctrine of *Metropolitan Life v. Taylor*. Once in federal court, Lucent also sought to have respondents' claims dismissed under ERISA's express preemption clause, § 514 (29 U.S.C. § 1144), which preempts state laws (including state causes of action) that "relate to" benefits under ERISA plans. *See Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41 (1987). Respondents moved for remand to the state court (and opposed dismissal), arguing that neither complete preemption nor conflict preemption applied because the additional benefits they sought were not part of an ERISA plan.

Conflating the concept of complete preemption with express preemption under ERISA § 514, the district court held that it had jurisdiction because respondents' claims, in its view, related to an ERISA plan and were therefore preempted by § 514. The court did not recognize that the jurisdictional premise of the complete preemption doctrine is the presence of a *federal* claim arising under ERISA, and it did not provide any opportunity for respondents to amend their complaint to assert such a claim expressly; it simply dismissed the complaint and the action in its entirety.

The Tenth Circuit reversed the district court's denial of respondents' motion to remand, though on a ground entirely different from that argued by respondents.[1] The court of appeals began by explaining the distinction between express conflict preemption and complete preemption under ERISA and pointing out (correctly) that the district court had confused the two. *See* 387 F.3d at 1153-58. Express preemption, the court observed, occurs whenever a state law relates to an ERISA plan, but it is only a defense to liability and not a basis for federal jurisdiction. *See id.* at 1156. Complete preemption is reserved for the narrower circumstance in which a

[1] As Lucent notes, respondents' position on appeal was, again, that their claims did not involve a true ERISA plan.

nominally state-law claim falls within the scope of ERISA § 502(a) and is thus deemed to arise under federal law for jurisdictional purposes. *See id.*

The court went out of its way to say that the district court may have been correct in finding that respondents' state-law claims "relate to" an ERISA plan and thus are expressly preempted. *See id.* at 1158. However, the court held that respondents' claims are not within the scope of ERISA § 502(a) and thus not subject to federal jurisdiction under the complete preemption doctrine. The basis of the court's holding was that respondents, as former employees, have no standing to assert a claim to benefits under an ERISA plan, even if the benefits would have been due them had they remained employed. Following Tenth Circuit rulings including *Raymond v. Mobil Oil*, 983 F.2d at 1535-36, the court premised its standing analysis on the proposition that respondents are not seeking benefits "due" them "under the terms of a plan" within the meaning of ERISA § 502(a)(1). The court held that a claim that a plaintiff *would* have been entitled to benefits under the terms of a plan *but for* a defendant's wrongful conduct does not confer standing under ERISA § 502(a). *See* 387 F.3d at 1158-63.

In so holding, the Tenth Circuit expressly acknowledged that its view of ERISA standing, while consistent with its own decisions and with decisions of the Eleventh and Fourth Circuits, was directly contrary to decisions of "the First, Second, Fifth, Sixth, and Eighth Circuits[, which] have held that former employees may sue under ERISA if they make a 'but for' claim of this sort." *Id.* at 1159. The court's opinion makes clear that, if it had followed the majority view and recognized respondents' standing to assert an ERISA claim, it would have held their complaint to be within the scope of ERISA § 502(a) and thus subject to federal jurisdiction under the complete preemption doctrine.

The Tenth Circuit acknowledged that "[i]t is true that our opinion leaves open the uncomfortable possibility that Plain-

tiffs may lack standing to sue under ERISA, but will then be preempted in state court under § 514 from asserting a state claim, leaving them with no remedy." *Id.* at 1162. Despite its recognition that "this is a valid concern," the court dismissed it as not being "a concern *of the federal judiciary*." *Id.* (emphasis added). The Tenth Circuit's standing ruling — which, we reiterate, had been advocated by neither party to the case — thus leaves respondents facing the very real possibility of having no federal or state remedy despite having alleged conduct that all would agree is wrongful if proved.[2]

REASONS FOR GRANTING THE WRIT

I. This Case Presents an Important and Recurring Issue on Which the Courts of Appeals Have Long Been Deeply Divided.

As Lucent's petition explains, and as the Tenth Circuit itself forthrightly admitted, there is a longstanding conflict among the circuits over whether plaintiffs with claims indistinguishable from respondents' have standing to sue under ERISA. In particular, plaintiffs who (like respondents) claimed that their employers had cheated them out of eligibility for plan benefits by using misrepresentations to induce them to retire early succeeded in establishing standing to raise ERISA claims in *Vartanian v. Monsanto Corp.*, 14 F.3d 697 (1st Cir. 1994); *Mullins v. Pfizer, Inc.*, 23 F.3d 663 (2d Cir. 1994); *Christopher v. Mobil Oil Corp.*, 950 F.2d 1209 (5th Cir. 1992); *Swinney v. General Motors Corp.*, 46 F.3d 512 (6th Cir. 1995); *Astor v. IBM Corp.*, 7 F.3d 533 (6th Cir. 1993); *Drennan v. General Motors Corp.*, 977 F.2d 246 (6th

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[2] Under respondents' own theory that the payments they were deprived of were not genuinely part of an ERISA plan, they would not face this dilemma, as their claims would not be within the scope of § 502(a), nor would they "relate to" an ERISA plan. The Tenth Circuit seems to have assumed, as the district court had held, that the additional payments respondents lost through early retirement were part of an ERISA plan. *See* 387 F.3d at 1152 n. 5.

Cir. 1992); and *Panaras v. Liquid Carbonic Industries Corp.*, 74 F.3d 786 (7th Cir. 1996).[3]

Moreover, in the cases most squarely on point, *Vartanian* and *Mullins*, the First and Second Circuits not only found *standing* under ERISA, but also held that the plaintiffs' claims that they had been induced to retire by affirmative misrepresentations stated valid claims under ERISA that must be permitted to proceed to decision on the merits. *See Vartanian*, 14 F.3d at 703; *Mullins*, 23 F.3d at 668-70.[4] As the court put it in *Vartanian*:

> We hold that where an employee alleges a decision to retire based on alleged misrepresentations by his employer amounting to a breach of fiduciary duty, and the true facts are not available to the employee until after the employee has received all his vested benefits under the plan; and further, where the employee shows that in the absence of the employer's breach of duty he would have been entitled to greater benefits than those which he received, then his receipt of payment cannot be used to deprive him of "participant" status and, hence, standing to sue under ERISA.

14 F.3d at 703. As Lucent admits, under the reasoning of *Vartanian*, respondents "undeniably" stated an ERISA claim (assuming that the $15,000 in severance benefits they lost were part of an ERISA plan).

The conflict, moreover, is longstanding and deep: It is well over a decade old, with multiple circuits on either side. As the large number of cases demonstrates, the issue is recur-

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[3] The Tenth Circuit's ruling also conflicts in principle with the other decisions cited in Lucent's petition at pp. 14-16; the cases we cite in the text are those in which the claims are most directly comparable to respondents'.

[4] In some of the other cases, the plaintiffs did not prevail because they failed to allege or prove an actionable misrepresentation.

ring, and its importance is clear. This Court has repeatedly emphasized the need for uniformity in the interpretation of ERISA, a statute that affects huge numbers of employees and employers nationwide: "The purpose of ERISA is to provide a uniform regulatory regime over employee benefit plans." *Aetna Health Inc. v. Davila*, 542 U.S. 200, ___ (2004). That purpose is thwarted when employees in, for example, Massachusetts, New York, Ohio, and Texas can obtain an ERISA remedy while employees in Oklahoma, Virginia, and Florida are denied remedies for exactly the same misconduct.

The significance of the Tenth Circuit's ruling is heightened by the very real possibility — openly acknowledged by the court below — that it will lead not only to the denial of an ERISA remedy, but also to the denial of *any* remedy for fraudulent conduct that (as this Court has recognized) plainly violates ERISA if it occurs in connection with ERISA plan benefits. *See Varity Corp. v. Howe*, 516 U.S. 489 (1996). The Tenth Circuit's blithe statement that such an unjust result is not "a concern of the federal judiciary," 387 F.3d at 1162, is impossible to square with ERISA's status as a remedial statute designed "to protect ... the interests of participants ... and ... beneficiaries ... by establishing standards of conduct, responsibility, and obligation for fiduciaries ... and ... providing for appropriate remedies ... and ready access to the Federal courts." *Varity Corp.*, 516 U.S. at 513 (quoting ERISA § 2(b) (29 U.S.C. § 1001)(b)).[5]

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[5] The Tenth Circuit's suggestion that its holding would not necessarily preclude other ERISA remedies (387 F.3d at 1163) is hard to credit given that its standing analysis would appear to foreclose even the § 502(a)(3) remedy that this Court said was authorized in *Varity*. Moreover, the court's assertion that respondents' claim could not arise under § 502(a)(3) because they do not seek equitable relief is wrong. Under Federal Rule of Civil Procedure 54(c), a plaintiff is entitled to all appropriate relief whether or not it is specifically demanded in the complaint.

Lest the Court think it odd that respondents in this case would agree with Lucent on the standing question, we note that in other cases addressing the issue, *plaintiffs* had brought suit originally in federal court under ERISA, and *defendants* sought to thwart their claims by asserting a lack of standing. Respondents here agree with the position, uniformly advocated by plaintiffs in such cases, that ERISA provides a remedy (if the benefits sought are part of an ERISA plan). In this case, Lucent sought to litigate in federal court and hence was forced itself to argue that respondents had ERISA standing (in the face of the Tenth Circuit's longstanding contrary position). The dispositive issue, however, remains the same as in other standing cases: Do plaintiffs in respondents' shoes have standing to seek a remedy under ERISA § 502(a) (in which case their claims are completely preempted and hence subject to federal jurisdiction); or do they lack standing (in which case their claims do not fall within the scope of § 502(a) and the case must be remanded to the Oklahoma state courts)?

II. If There Is Federal Jurisdiction, Respondents Must Be Permitted to Pursue Their Claims Under ERISA.

Although Lucent correctly identifies the circuit conflict over standing under ERISA § 502(a), it misperceives the consequences for this case if the Tenth Circuit is reversed. Lucent appears to believe that if respondents' claims fall within the scope of § 502(a), they must be "dismissed as completely preempted." Pet. 14. Lucent's position is based on a misunderstanding of the nature of complete preemption.

As Judge Easterbrook has observed, "'complete preemption' is a misnomer .... The name misleads because, when federal law occupies the field (as in labor law), *every* claim arises under federal law." *Lehmann v. Brown*, 230 F.3d 916, 919 (7th Cir. 2000). Complete preemption under ERISA thus permits assertion of federal jurisdiction over nominally state-law claims because "a complaint about pensions rests on federal law no matter what label its author attaches." *Bartholet v. Reishauer A.G.*, 953 F.2d 1073, 1075 (7th Cir. 1992). Put

another way, complete preemption means that a claim "'really' depend[s] on federal law," *id.*, or, as this Court has put it, that a completely preempted state-law claim is "converted" into a federal ERISA claim. *Metropolitan Life v. Taylor*, 481 U.S. at 65. "This is so because '[w]hen the federal statute completely pre-empts the state-law cause of action, a claim which comes within the scope of that cause of action, even if pleaded in terms of state law, is in reality based on federal law.'" *Davila,* 542 U.S. at __ (quoting *Beneficial Nat. Bank v. Anderson*, 539 U. S. 1, 8 (2003)).

In its true character as a federal ERISA claim, a completely preempted claim is no longer subject to express preemption under ERISA § 514. After all, that section extinguishes only *state-law* claims, and the premise of complete preemption is that the claim does *not* arise under state law but is really a federal claim. *See Jass v. Prudential Health Care Plan, Inc.*, 88 F.3d 1482, 1490 (7th Cir. 1996). Thus, once federal jurisdiction has been asserted over a claim on complete preemption grounds, whether the claim is subject to dismissal depends on whether the facts pleaded state the elements of a claim under *federal* law. *See Bartholet*, 953 F.2d at 1077-78; *see also Jass*, 88 F.3d at 1490. Here, given that Lucent freely admits that under its view of the law respondents have *undeniably* stated an ERISA claim, there can be no justification for dismissal of their claim if it is found to be completely preempted and thus to arise under federal law.

Lucent cannot have it both ways. If respondents' claim falls within federal jurisdiction because it is "really" an ERISA claim, it cannot be dismissed on the theory that it is a state-law claim barred by § 514. Rather, if the claim is subject to complete preemption, it must be permitted to proceed in federal court as a claim under ERISA.[6] It would be ironic

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[6] The lower federal courts would still, of course, be required to determine that the additional payments sought by respondents are benefits

(*Footnote continued*)

indeed if Lucent, having told this Court that certiorari should be granted in order to ensure adequate judicial remedies to ERISA beneficiaries, were permitted to *escape* liability by prevailing in its effort to bring this case within the scope of federal jurisdiction.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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under an ERISA plan, for if they are not, the claim would neither be subject to complete preemption nor express preemption.